

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

BOBBIE LEE JONES, deceased,

Plaintiff,

v.

**Civil Action No. 3:08-CV-110
(Judge Bailey)**

**MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION/OPINION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation/Opinion of United States Magistrate Judge John S. Kaull [Doc. 5] dated August 26, 2008, to which neither party filed objections. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the District Court to review the recommendation under the standards that the District Court believes are appropriate, and under these circumstances, the parties' right to *de novo* review is waived. See **Webb v. Califano**, 468 F. Supp. 825 (E.D. Cal. 1979).

On July 10, 2008, plaintiff filed an Application to Proceed without Prepayment of Fees and Costs [Doc. 2], which was denied by order dated July 18, 2008 [Doc. 3]. In that Order, the magistrate judge cautioned the plaintiff that failure to pay the filing fees would result in a recommendation of dismissal to the District Judge. In his R & R, Magistrate Judge Kaull did make a recommendation that this Court dismiss this action. On September 16, 2008, this Court contacted the plaintiff's attorney, Jan Dils, and inquired into the status

of this case. Ms. Dils informed the Court that her clients did not intend to pay the filing fee or to file any objections to the R & R and that they wish to have the Complaint dismissed.

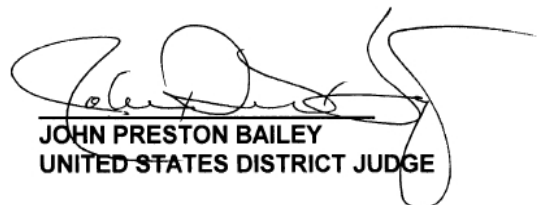
Accordingly, because no objections have, or will, be filed, this report and recommendation ("R & R") will be reviewed for clear error. Upon review of the R & R and the record, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation/Opinion **[Doc. 5]** should be, and is, hereby **ORDERED ADOPTED**.

For reasons more fully stated in the Report and Recommendation/Opinion of United States Magistrate Judge Kaull [Doc. 5], this Court **ORDERS** that Claimant's Complaint **[Doc. 1]** be **DENIED** and that this action be **DISMISSED without prejudice** for failure to pay the \$350.00 filing fee. Accordingly, this case is **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to mail a copy to plaintiff's counsel.

DATED: September 17, 2008.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE